

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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DANIEL RATHGABER,

Plaintiff,

-against-

THE TOWN OF OYSTER BAY, and STEVEN L.  
LABRIOLA, individually and as the Town Clerk,

Defendants.

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**MEMORANDUM OF  
DECISION AND ORDER**  
06 CV 5450 (ADS)(WDW)

**APPEARANCES:**

**WILLIAM J. EPPIG, ESQ.**

Attorney for the Plaintiffs  
1175 Montauk Highway  
West Islip, New York 11795

**GREGORY J. GIAMMALVO**

**TOWN ATTORNEY FOR THE TOWN OF OYSTER BAY**

54 Audrey Avenue  
Oyster Bay, New York 11771

By: Donna Swanson, Assistant Town Attorney  
Frank Scalera, Deputy Town Attorney

**SPATT, District J.**

Daniel Rathgaber (the “plaintiff”) brings this action against the Town of Oyster Bay (the “Town”), and Steven L. Labriola (“Labriola”) (collectively the “defendants”), alleging that the Town’s licensing provisions for commercial shellfishing violate the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution. The plaintiff seeks a

preliminary injunction directing the Town Clerk to issue a shellfishing license to the plaintiff during the pendency of this action.

This matter is respectfully referred to United States Magistrate Judge William D. Wall to hold a hearing for the purpose of resolving all questions of fact and law relating to the plaintiff's request for a preliminary injunction directing the Town to issue a license to him, and to issue a report and recommendation to that effect pursuant to Rule 72(b) of the Federal Rules of Civil Procedure.

**SO ORDERED.**

Dated: Central Islip, New York  
October 13, 2006

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge